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7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF ARIZONA

10 Loo Tze Ming, an Individual,

11  
12 Plaintiff,

13 vs.  
14

15 Fitness Anywhere LLC, a Delaware  
16 LLC,

17 Defendant.

Case No. 2:22-cv-02042-SPL

**PLAINTIFF RESPONSE TO  
ORDER TO SHOW CAUSE**

18  
19 Plaintiff hereby submits this Response to the Order to Show Cause issued by the  
20 Court on March 1, 2023, and states as follows:

21 **FACTS**

22 The underlying dispute in this Action was initiated by the Defendant upon filing a  
23 domain dispute arbitration proceeding against Plaintiff on October 22, 2022, and by the  
24 Defendant's consent to the terms of the dispute proceeding providing for Plaintiff to file  
25 this Action to prevent transfer of Plaintiff's domain. (Complaint ¶¶22-25).

1 On December 16, 2022, Defendant executed a Waiver of Service, which was filed  
2 with the Court by Plaintiff on December 22, 2022. The Waiver of Service was executed  
3 by Alain Villeneuve. On February 2, 2023, Plaintiff consented to a request by Alain  
4 Villeneuve for Defendant for an additional 30 days to plead responsively, provided that  
5 Defendant would circulate a stip to Plaintiff's counsel for approval and file the stip.  
6 Defendant never circulated a stipulation in response.

7 As noted in footnote 1 of the Order to Show Cause, rather than file a timely  
8 responsive pleading or motion Defendant emailed the Court ("The Court notes that a  
9 third party emailed the Court and Plaintiff's counsel indicating that Defendant had filed  
10 for bankruptcy."). The "third party" that sent that email is the same person that executed  
11 the Waiver of Service on behalf of Defendant Fitness Anywhere LLC (Alain  
12 Villeneuve). More specifically, on February 3, 2023, Alain Villeneuve emailed a  
13 "Notice of Bankruptcy / Chapter 11" to the Court. (Exhibit A) The Court informed  
14 Defendant, in a responsive email dated February 9, 2023, "[T]he Court cannot take any  
15 action unless the notice is filed on the docket." (Exhibit A)

16 Despite the Court's response to the Defendant's email, Defendant has not filed  
17 such notice on the docket. Instead, Defendant requested Plaintiff to do so stating, "Can  
18 you please enter into the record for the Court the Notice of Bankruptcy." (Exhibit B)  
19 Understandably, Plaintiff has declined to do what the Defendant was itself instructed to  
20 do by this Court. Furthermore, in spite of Defendant's waiver of service, Defendant has  
21 still not entered an appearance in this Action or otherwise plead responsively.

## 22 RESPONSE

23 The Court should not dismiss this case, but rather should enter a stay, as Plaintiff  
24 has been diligent in the context of the bankruptcy stay that has been raised (so far) off  
25 the record by Defendant. Section 11 U.S. Code § 362 of the Bankruptcy Code imposes a

1 broad automatic stay of a wide range of actions against a debtor in bankruptcy.

2 Subsequent to the filing of this action, Plaintiff became aware that on June 8, 2022, the  
3 Defendant filed a Chapter 11 Bankruptcy Case in the United States Bankruptcy Court  
4 for the Central District of California, as Case No. 8:22-bk-10949-SC (hereinafter the  
5 “Bankruptcy”). See also Exhibit A.

6 The circumstances in this action are somewhat unusual, as the Bankruptcy Case  
7 had been filed prior to Defendant’s own filing of the domain dispute proceeding on  
8 October 22, 2022, and prior to Defendant’s agreement to the terms thereof, which  
9 expressly contemplate action in this District to prevent the transfer of Plaintiff’s domain.  
10 (Complaint ¶¶ 24-25). It appears that Defendant has sought to use the domain dispute  
11 proceeding as a spear, while at the same time using the Bankruptcy Case as a shield  
12 against the consequences to which the Defendant agreed when it filed the domain  
13 dispute proceeding.

14 Nevertheless, after this court notified Defendant that this court could not take any  
15 action (with respect to the bankruptcy notice) unless it were filed on the docket,  
16 Plaintiff expected Defendant to follow the court’s instruction and to file something on  
17 the docket. Defendant has not done so (instead, attempting to have Plaintiff do its job).  
18 Furthermore, as the court observes, it is long past the deadline for the Defendant to have  
19 filed a responsive pleading or motion in this action. Plaintiff would have proceeded with  
20 a request for entry of default against the Defendant but for Defendant’s apparent  
21 intention to file a notice of bankruptcy with this Court in apparent pursuit of a stay of  
22 this action.

23 Because Plaintiff is now aware of the bankruptcy (and in spite of the fact that  
24 Defendant has not taken steps to file notice of the same with this Court), Plaintiff  
25 requests, out of an abundance of caution as it relates to the California bankruptcy

1 proceeding and a desire not to violate any stay that might be in place, that this Arizona  
2 case be stayed pending either: (a) the lifting of any automatic stay in the Bankruptcy; or,  
3 (b) issuance of a “comfort order” or equivalent order from the Bankruptcy judge  
4 permitting this action to proceed. Whereupon, Plaintiff shall promptly proceed with its  
5 request for entry of default and motion for default judgment ordering transfer of the  
6 disputed domain name to the Plaintiff, along with other relief available under 15 USC  
7 1114(2)(d)(iv)-(v).

8 DATED this 6<sup>th</sup> day of March, 2023.

9  
10 SCHMEISER, OLSEN & WATTS LLP

11 By:

12  
13 /s/Jeffrey W. Johnson

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